



## SECTION 1.

The Boston Police Department (BPD) shall adopt the use of body-worn cameras on police officers to: improve community relations; foster better accountability of its personnel; capture digital audio-video evidence for criminal, civil, and traffic-related court cases; be used as a training tool for officer safety and best practices in the Boston Police Department; and assist in the assessment of contacts between officers and members of the public by reviewing procedures and interpersonal actions. All provisions laid out in this rule shall be reflected in all related rules and procedures of the Boston Police Department.

## SECTION 2.

### Definitions

- (1) "Body-worn camera" shall refer to that device which can record both audio and video of an interaction between an Officer and a Civilian
- (2) "Civilian" shall refer to any person that is not an on-duty police officer.
- (3) "Officer" shall refer to that which is defined in Rule 103 of the BPD Rules and Procedures.

## SECTION 3.

(a) Only officers with the authority to conduct searches and make arrests shall be permitted to wear a body-worn camera. Such body-worn cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.

(b) Both the video and audio recording functions of the body-worn camera shall be activated whenever an officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so. The body-worn camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene.

(c) An officer who is wearing a body-worn camera shall notify the subject(s) of the recording that they are being recorded by a body-worn camera as close to the inception of the encounter as is reasonably possible.

(d) Notwithstanding the requirements of subsection (b):

- (1) Before entering a private residence without a warrant or in non-exigent circumstances, an officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body-worn camera. If the occupant responds affirmatively, the officer shall immediately discontinue use of the body-worn camera;
- (2) When interacting with an apparent crime victim, an officer shall, as soon as practicable, ask the apparent crime victim if the apparent crime victim wants the officer to discontinue use of the officer's body-worn camera. If the apparent crime victim responds affirmatively, the officer shall immediately discontinue use of the body-worn camera; and
- (3) When interacting with a person seeking to anonymously report a crime or assist in an



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ongoing law enforcement investigation, an officer shall, as soon as practicable, ask the person seeking to remain anonymous if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body-worn camera. If the person seeking to remain anonymous responds affirmatively, the officer shall immediately discontinue use of the body-worn camera.

(e) All law enforcement communications regarding the option to discontinue use of a body-worn camera made pursuant to subsection (d), and the responses thereto, shall be recorded by the body-worn camera prior to discontinuing use of the body-worn camera.

(f) Body-worn cameras shall be worn openly in a prominent location on the officer's body, uniform, or clothing. Body-worn cameras shall not be used surreptitiously.

(g) Body-worn cameras, as well as other devices that can record audio and video, shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between an officer and a member of the public.

(h) Officers shall not activate a body-worn camera while on the grounds of any public, private, charter, or parochial elementary or secondary school, except when responding to an imminent threat to life or health.

(i) Body-worn camera video footage shall be retained by the Boston Police Department, or an authorized agent thereof, for six months from the date it was recorded, after which time such footage shall be permanently deleted.

(j) Notwithstanding the retention and deletion requirements in subsection (i):

(1) Video footage shall be automatically retained for no less than three years if the video footage captures images involving:

(A) Any use of force;

(B) Events leading up to and including an arrest for a felony-level offense, or events that constitute a felony-level offense; or

(C) An encounter about which a complaint has been registered by a subject of the video footage.

(2) Body-worn camera video footage shall also be retained for no less than three years if a longer retention period is requested by:

(A) The officer whose body camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

(B) Any officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

(C) Any superior officer of an officer whose body-worn camera recorded the video



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footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;

(D) Any officer, if the video footage is being retained solely and exclusively for police training purposes;

(E) Any member of the public who is a subject of the video footage;

(F) Any parent or legal guardian of a minor who is a subject of the video footage; or

(G) A deceased subject's next of kin or legally authorized designee.

(k) To effectuate subsections (j)(2)(E), (j)(2)(F) and (j)(2)(G), any member of the public who is a subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, shall be permitted to review that specific video footage in order to make a determination as to whether they will voluntarily request it be subject to a three-year retention period. Rules related to fees or charges for aforementioned footage shall be as follows:

(1) No fee, tax, or monetary amount of any kind shall be levied upon the parties enumerated above in any way. The City shall assume the burden of costs associated with labor and fees;

(2) Fees and taxes may be levied upon individuals not associated with the parties enumerated in Section 3(k) but may not exceed a rate more than twenty-five percent the agreed-upon fee. The City shall assume the remaining burden of costs. Video footage may only be obtained with the consent and approval of the Commissioner and subject, or legally authorized designee, of requested film; and

(3) Fees and taxes may be levied upon private corporations, media outlets, and public entities that directly request video footage. These entities shall assume full burden of costs associated with labor and other fees. Video footage may only be obtained with the consent and approval of the Commissioner and subject, or legally authorized designee, of requested film.

(l) The following video footage shall be exempt from the public inspection requirements of the Massachusetts public records law (M.G.L. c.4 s. 7 cl. 26; M.G.L. c.66):

(1) Video footage not subject to a minimum three-year retention period pursuant to subsection (j);

(2) Video footage that is subject to a minimum three-year retention period solely and exclusively pursuant to subsection (j)(1)(C), where the subject of the video footage making the complaint requests the video footage not be made available to the public;

(3) Video footage that is subject to a minimum three-year retention period solely and exclusively pursuant to subsection (j)(2)(A), (j)(2)(B), (j)(2)(C) or (j)(2)(D); and

(4) Video footage that is subject to a minimum three-year retention period solely and exclusively pursuant to subsection (j)(2)(E), (j)(2)(F), or (j)(2)(G), where the person making the voluntary request requests the video footage not be made available to the public.



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- (m) Any video footage retained beyond six months solely and exclusively pursuant to subsection (j)(2)(D) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding against a civilian.
- (n) No officer shall review or receive an accounting of any body-worn camera video footage that is subject to a minimum three-year retention period pursuant to subsection (j)(1) prior to completing any required initial reports, statements and interviews regarding the recorded event.
- (o) Video footage not subject to a minimum three-year retention period shall not be viewed by any superior officer of an officer whose body-worn camera recorded the footage absent a specific allegation of misconduct, nor shall it be subject to automated analysis or analytics of any kind.
- (p) Video footage shall not be divulged or used by the Boston Police Department for any commercial or other non-law enforcement purpose.
- (q) Where the Boston Police Department authorizes a third-party to act as its agent in maintaining body-worn camera footage, the agent shall not be permitted to independently access, view or alter any video footage, except to delete videos as required by law or agency retention policies.
- (r) Should any officer, employee or agent fail to adhere to the recording or retention requirements contained in this chapter, or intentionally interfere with a body-worn camera's ability to accurately capture video footage, the following measures shall be adopted:
  - (1) Disciplinary action shall be taken against the individual officer, employee or agent in the following manner:
    - (A) Failure to wear a body-worn camera while on duty shall result in the use of discipline found in Rule 109, Part II, sec. 32/8/d of the Boston Police Department Rules and Procedures;
    - (B) Failure to properly maintain the body-worn camera during a shift shall result in the use of discipline found in Rule 109, Part II, sec. 32/2/c of the Boston Police Department Rules and Procedures;
    - (C) Failure to keep the body-worn camera on during an interaction with a civilian for which no request for discontinuation is recorded pursuant to subsection (e) shall result in the use of discipline found in Rule 109, Part II, sec. 32/2/f of the Boston Police Department Rules and Procedures;
    - (D) Failure to produce recorded communication regarding the discontinued use of the body-worn camera pursuant to subsection (e) shall result in the use of discipline found in Rule 109, Part II, sec. 32/6 of the Boston Police Department Rules and Procedures;
    - (E) Failure to turn off the body-worn camera when a civilian responds affirmatively to an option to discontinue use pursuant to subsection (d) shall result in the use of discipline found in Rule 109, Part II, sec. 32/13 of the Boston Police Department



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## Rules and Procedures;

(F) Disciplinary action equivalent to the disciplinary actions for the offenses listed in Rule 109, Part II, sec. 32/2/f of the Boston Police Department Rules and Procedures shall be taken against an individual officer, employee or agent for otherwise failing to adhere to the requirements of this chapter;

(2) A rebuttable evidentiary presumption shall be adopted in favor of criminal defendants who reasonably assert that exculpatory evidence was destroyed or not captured; and

(3) A rebuttable evidentiary presumption shall be adopted on behalf of civil plaintiffs suing the Boston Police Department and/or Boston Police Department officers for damages based on police misconduct who reasonably assert that evidence supporting their claim was destroyed or not captured.

(s) The disciplinary action requirement and rebuttable presumptions in subsection (r) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.

(t) Any body-worn camera video footage recorded in contravention of this or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal or civil legal or administrative proceeding against a civilian.

(u) Nothing in this chapter shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.

(v) As used this section, “subject of the video footage” means any Boston Police Department officer or any suspect, victim, detainee, conversant, injured party or other similarly situated person who appears on the body-worn camera recording, and shall not include people who only incidentally appear on the recording.